

NTSB Order No. EA-4913

Issued under delegated authority (49 C.F.R. 800.24)
on the 21st day of September, 2001

Respondent .

Docket SE-16308

On May 30, 2001, Administrative Law Judge William R. Mullins, at the time and place set for an evidentiary hearing at which respondent did not appear, rendered an oral decision affirming an emergency order of the Administrator revoking any and all airman certificates held by respondent, including Mechanic Certificate No. 48465138, for his alleged refusal to submit to a random drug test, in violation of section 65.23(b) of the Federal Aviation Regulations (14 C.F.R. Part 65).¹ Respondent did not file a notice of appeal within the 2-day time limit prescribed by Section 821.57(a) of our Rules of Practice,

¹In light of the fact that the Administrator, albeit prepared to do so, did not put on any evidence in support of her charge, the law judge should have dismissed the respondent's appeal rather than affirming the Administrator's order.

49 C.F.R. 821.57(a), for an appeal in an emergency case, and he did not file an appeal brief within 5 days after the last day for filing the notice, as required by Section 821.57(b).

Subsequently, by facsimile transmission on June 21, 2001, respondent filed with the law judge a request for reconsideration of his May 30 decision, essentially on the ground that he had not received the notice of hearing until June 2, after returning from a two-week trip.² The submission also included a request that the expedited procedures applicable to an emergency proceeding be waived.³ On July 30, 2001, the law judge, without addressing the waiver issue, denied the reconsideration request, reasoning that the respondent should not have been unavailable for receipt of such a communication from the Board during a period within which he should have anticipated that a hearing on his appeal from the emergency order would have to be scheduled.⁴ Respondent filed an appeal with the Board from that denial on August 9.

Respondent's appeal must be dismissed as untimely. Since respondent did not ask the law judge to reconsider or the Board to review the May 30 decision within the two days allowed for appeal in an emergency case, he cannot now ask for review of a later (and unauthorized) refusal by the law judge to reconsider it.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's appeal is dismissed.

Ronald S. Battocchi
General Counsel

²Respondent does not explain why he waited almost three weeks after receiving a copy of the May 30 decision before apprising the law judge, in the reconsideration request, of his reasons for not appearing at the hearing. It is therefore not necessary to determine whether respondent had good cause for not filing a notice of appeal as soon as he could after returning to his home on June 1.

³A waiver request filed after the time for appealing the law judge's decision does not convert the case to the time limits applicable to a non-emergency.

⁴Without regard to the validity of the law judge's view in this respect, he had no authority to rule on the merits of the request, once the time for filing an appeal with the Board had

(..continued)
expired. See Section 821.47(b) of our Rules of Practice.